

Congress of the United States
Washington, DC 20515

December 6, 2011

Secretary Timothy Geithner
Department of Treasury
1500 Pennsylvania Avenue NW
Washington, D.C. 20220

Re: Reg-131491-10, Health Insurance Premium Tax Credit, Notice of Proposed Rule Making

Dear Secretary Geithner:

We are writing to express concerns regarding the impact of the proposed regulations on a family's eligibility for the Affordable Care Act's premium tax credits and subsidies for cost-sharing and the effect that such regulations may have on insurance coverage for children and spouses. These credits are a key component of providing stable, affordable, quality health insurance coverage to tens of millions of middle-class American families and individuals.

Under the Affordable Care Act, an individual is not eligible for premium tax credits and related cost-sharing subsidies if the individual is eligible to enroll in "affordable" employer-sponsored coverage. The legislation specifies that such coverage is not affordable if the employee's required premium for that coverage is greater than 9.5 percent of household income.

As proposed, the Department of Treasury has chosen to interpret affordable coverage solely by reference to the employee's required premium for self-only coverage, without consideration of the relative affordability of family coverage. Unfortunately, the result of this interpretation is that a number of middle-class families may be prevented from obtaining premium tax credits to assist in the purchase of health insurance coverage even if their required premium for family coverage exceeds 9.5 percent of their household income. We hope that this is an unintended consequence of the proposal, and urge you take the alternative reading in the final regulation.

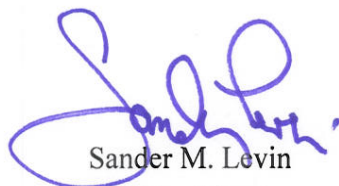
This interpretation in the proposed regulation is inconsistent with the goals of the Affordable Care Act to expand health insurance coverage and ensure that such coverage is affordable. The 9.5 percent measure of affordability was included in the law to ensure that people -- individuals and families -- are not arbitrarily denied access to more affordable coverage simply because their employer made a titular or paper offer of "coverage". As you know, it is very easy to price employees out of accepting employer-sponsored coverage by shifting substantial costs of that coverage to employees. The notion that Congress wrote the law in a manner that would exclude many families from access to more affordable coverage in the exchange if their employer offered them family coverage exceeding 9.5 percent of their household income is simply incongruent. If the proposed regulation is left in place, the effect of this wrong interpretation of the law will be that many families remain or potentially become uninsured.

A related, additional unintended consequence of the proposed interpretation would be to encourage employers to cost-shift greater portions of family premiums to employees. Because the measure of affordability would be solely tied to self-only coverage, employers would likely increase their contributions for that coverage to ensure that the employee premiums for such coverage remain under the 9.5 percent affordability threshold. Then, because there would be no legal parameters around what constitutes affordable family coverage, they would offset the additional contributions for self-only coverage by decreasing their contributions to family coverage.

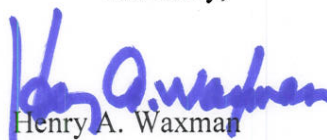
The upshot of this policy would be to substantially disadvantage children and spouses in need of employer-sponsored family coverage. They could be left with a very unaffordable employer offer of family coverage, yet remain locked out of the exchange and the tax credits and other cost-sharing assistance for which they might otherwise be eligible. This would perversely lead to children and others remaining or becoming uninsured. New analysis by the UC Berkeley Center for Labor Research and Education and the UCLA Center for Health Policy Research quantifies the potential impact on children. It finds that Treasury's narrow reading of affordability could result in 122,000 children and 126,000 adults in California being locked out of the opportunity to obtain affordable coverage in the health insurance exchange in 2019 alone. When magnified across the country, that number could well exceed 2 million people affected for a single year. We are confident that you do not want that to occur.

We urge you to revise the definition of affordable offer in the final regulation to ensure access to affordable family health coverage is protected as the law intends.

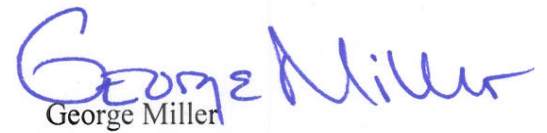
Sincerely,



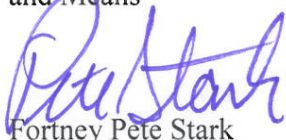
Sander M. Levin
Ranking Member
Committee on Ways
and Means



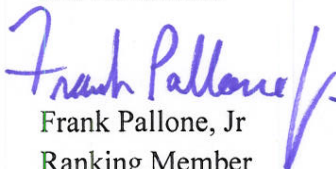
Henry A. Waxman
Ranking Member
Committee on Energy
and Commerce



George Miller
Ranking Member
Committee on Education
and Workforce



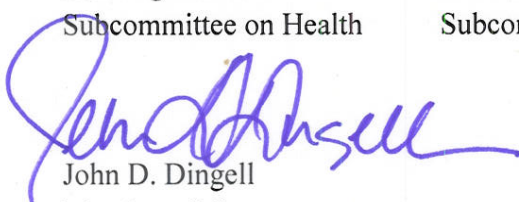
Fortney Pete Stark
Ranking Member
Subcommittee on Health



Frank Pallone, Jr.
Ranking Member
Subcommittee on Health



Robert Andrews
Ranking Member
Subcommittee on Health,
Employment, Labor, and
Pensions



John D. Dingell
Member of Congress